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APPLICATION OF

WASHINGTON GAS LIGHT COMPANY

CASE NO. PUE-2002-00178

**For approval of a plan to
remedy billing errors**

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

October 11, 2002

Washington Gas discovered errors in its billing process related to its failure to identify accurately the pressure of gas delivered to its customers. As a result, Washington Gas is over-billing some customers and under-billing others. Washington Gas, Staff, the Attorney General, and Fairfax County offered a Stipulation, under which Washington Gas would refund over-billed amounts that occurred over a five-year period, and collect under-billed amounts over a one-year period.

HISTORY OF THE CASE

On March 25, 2002, pursuant to 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure ("Rules"), Washington Gas Light Company ("Washington Gas" or "Company") filed a Petition for approval of "certain aspects" of its plan to remedy billing errors. Washington Gas requested that the Commission approve its plan to use an annual leak survey program to identify customers who have been billed incorrectly.

By Order dated April 10, 2002, the Commission docketed the matter; determined that the matter should be treated as an Application pursuant to 5 VAC 5-20-80 A of the Commission's Rules; assigned the matter to a Hearing Examiner; and directed any interested party and the Commission's Staff to file with the Commission by May 10, 2002, a responsive pleading to the Application or a request for hearing or both a responsive pleading and a request for hearing. The Company was also directed to provide public notice of its Application.

On May 3, 2002, Washington Gas filed Certificates of Publication issued by The Washington Post, The Northern Virginia Daily and the Winchester Star. The Company also filed an affidavit certifying that a copy of the prescribed notice was served on the Chairmen of the Board of Supervisors of all counties, and on the Mayors of all cities and towns, within the Company's Virginia service territory.

On May 8, 2002, Staff filed a Motion for Extension in which it asked that the deadline for interested parties and Staff to file responsive pleadings be extended from May 10, 2002, to May 24, 2002. Staff's Motion for Extension was granted by a Hearing Examiner's Ruling dated May 9, 2002.

Also on May 9, 2002, Roanoke Gas Company filed comments in which it observed that there are many ways to identify customers who have been billed incorrectly. Further it raised concerns about the establishment of any precedent that would limit the method of identifying customers billed incorrectly, to annual leak surveys. In addition, the Fairfax County Board of Supervisors filed a Notice of Participation and the City of Fairfax filed a letter requesting a public hearing in Northern Virginia.

On May 22, 2002, the Company filed a Motion for Extension, requesting that the deadline for interested parties and Staff to file responsive pleadings be further extended from May 24, 2002, to June 21, 2002. The Company's Motion for Extension was granted by a Hearing Examiner's Ruling dated May 23, 2002.

On May 24, 2002, the County Board of Arlington County filed a Notice of Participation in which, among other things, it requested a public hearing in Northern Virginia.

On June 21, 2002, Washington Gas filed a Joint Stipulation, which it claimed resolved all issues related to the remediation of billing errors. Washington Gas represented that the Staff, Division of Consumer Counsel of the Office of Attorney General ("Attorney General"), and Washington Gas Energy Services, Inc. agreed to the Joint Stipulation. In addition, Washington Gas represented that the Arlington County Citizen and Consumer Affairs ("Arlington County") and the Fairfax County Consumer Protection Division ("Fairfax County") would support the Joint Stipulation before their respective County Boards of Supervisors. On the same day Staff filed a letter in support of the Joint Stipulation.

Also on June 21, 2002, the Attorney General filed comments in favor of the Joint Stipulation, but also requested a public hearing for affected current and former customers to present their individual views to the Commission. A Hearing Examiner's Ruling dated July 15, 2002, scheduled public hearings for September 9, 2002, at 2:00 p.m. and 7:00 p.m. at the Fairfax County Judicial Center, General District Court – Traffic Division Courtroom 1-D, 4110 Chain Bridge Road, Fairfax, Virginia 22030, and directed the Company to publish notice of the hearing.

In a letter dated June 28, 2002, Pepco Energy Services, Inc. stated that it did not execute the Joint Stipulation because of concerns that under the provisions of 20 VAC 5-312-90 H, which governs the assignment of customer payments when a customer makes a partial payment, under-billed errors of Washington Gas will have a higher payment priority than the services provided by competitive suppliers.

On August 19, 2002, Washington Gas filed a Motion for Leave to Amend the Joint Stipulation by Adding a Signature Line for Fairfax County. In its Motion, the Company advised that on July 22, 2002, at its regularly scheduled meeting, the Board of Supervisors of Fairfax County approved the Joint Stipulation. A Hearing Examiner's Ruling dated August 20, 2002, granted leave to amend the Joint Stipulation.

On September 6, 2002, Washington Gas filed proof of notice for the September 9, 2002, public hearings, as required by the Examiner's Ruling dated July 15, 2002.

On September 9, 2002, public hearings were convened as scheduled at the Fairfax County Judicial Center, 4110 Chain Bridge Road, Fairfax, Virginia. No public witnesses offered testimony at either the 2:00 p.m. hearing or the 7:00 p.m. hearing. During the 2:00 p.m. hearing a letter was received from Mike Kilgore in which he questioned the safety of gas service provided by the Company. Mr. Kilgore also recommended that Washington Gas pay all over-billed customers from shareholder funds and not be allowed to collect any money from under-billed customers. The September 9, 2002, public hearings, especially the 2:00 p.m. hearing, also served as the evidentiary hearing in this matter. Representing Washington Gas was Donald R. Hayes, Esquire, and Douglas Pope, Esquire. Dennis R. Bates, Esquire, appeared on behalf of Fairfax County. Charles Wood, Esquire, appeared on behalf of Arlington County. Christy A. McCormick, Esquire, appeared on behalf of the Attorney General. Katharine B. Hart, Esquire, and Allison L. Held, Esquire, represented the Staff. Filed with this Report are transcripts from each of the hearings.

SUMMARY OF THE RECORD

In its Application, Washington Gas explained that since 1988, it has offered residential and small commercial customers a choice between two delivery pressures of natural gas – 0.2 pounds per square inch (“0.2-psi”), or 2 pounds per square inch (“2-psi”).¹ In order to render accurate bills to customers using the 2-psi system, the Company must either: (i) install a meter that automatically compensates for the higher delivery pressure, or (ii) use an adjustment factor in the billing system to adjust for the higher delivery pressure.² Initially, Washington Gas installed so-called “red-dial” meters that automatically compensated for the higher delivery pressure.³ However, in the early 1990’s, Washington Gas began using remote meter-reading equipment, which required the use of a standard meter and an adjustment factor for a customer served at 2-psi.⁴ Of the Company’s approximately 380,000 customers in Virginia, the Company currently provides service through 3,502 “red-dial” meters and uses an adjustment factor for 70,900 customer accounts.⁵

In March 2001, Washington Gas discovered that it was incorrectly applying its billing-adjustment factors, causing some customers to be over-billed and other customers to be under-billed.⁶ A review by the Company revealed that its billing-adjustment errors fall into three categories. The first category included customers served at 2-psi through a “red-dial” meter, to which Washington Gas applied the billing-adjustment factor.⁷ Thus, the Company has over-billed such customers.⁸ The second category is made up of customers served at 0.2-psi through a

¹ Application at ¶ 2.

² *Id.* at ¶ 3.

³ *Id.* at ¶ 4.

⁴ *Id.* at ¶ 5.

⁵ *Id.* at ¶¶ 4-5.

⁶ *Id.* at ¶¶ 6-7.

⁷ *Id.* at ¶ 9.

⁸ *Id.*

standard meter to which Washington Gas applied the billing-adjustment factor.⁹ The Company has over-billed these customers, also. Finally, the third category is made up of customers served at 2-psi through a standard meter, to which Washington Gas failed to apply a billing-adjustment factor.¹⁰ Consequently, the Company has under-billed customers in this category.¹¹

The first category of errors, resulted from a programming error which was made on February 24, 1998, and corrected on October 23, 2001.¹² As a result of the error, bills for “red-dial” meter customers were calculated with the billing-adjustment factor.¹³ The Company notified all affected customers that they had been over-billed and are entitled to a refund.¹⁴

According to the Company, errors falling into the second and third categories stem from a process error that failed to identify correctly a customer’s delivery pressure.¹⁵ In response, Washington Gas formed separate teams to: (i) investigate and correct the process errors that led to the billing errors; (ii) identify every customer affected by the billing problem; and (iii) create a billing program to reconcile over- and under-billed amounts for each customer over the relevant time frame.¹⁶ The Company will use its annual leak survey to identify customers affected by the billing problem.¹⁷ Because the annual leak survey is conducted on approximately one-third of the Company’s facilities each year, the process to identify affected customers will not be completed until October 2004.¹⁸

Washington Gas estimated that of its approximately 380,000 customers in Virginia, about 25,800 customers have been billed incorrectly.¹⁹ Including the approximately 3,500 “red-dial” meter customers, the Company placed the number of over-billed customers at 9,500.²⁰ Washington Gas estimated that approximately 16,300 customers were under-billed.²¹

In its Application, Washington Gas proposed to refund to each applicable customer any over-billed amounts from March 1996, or when the affected customer began service if after that date, until the billing for that customer is corrected.²² In addition, Washington Gas agreed to pay interest on all over-billed amounts at the applicable customer deposit rate.²³ For customers who were under-billed, Washington Gas planned to charge for under-billed amounts beginning five

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at ¶ 10.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 11.

¹⁶ *Id.* at ¶ 12.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at ¶ 13.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at ¶ 15.

²³ *Id.*

years from the date the billing for each customer is corrected.²⁴ The Company offered to forgo charging interest on the under-billed amounts and will permit customers to spread the payment over the lesser of (i) five years, or (ii) the same period of time over which the arrearage accrued.²⁵

Furthermore, in its Application, Washington Gas stated it would use the same methods for customers affected by the billing errors who have participated in the Company's Customer Choice Program and have purchased gas from competitive service providers.²⁶ Such treatment would be used for the Company's distribution charges and for gas commodity charges where Washington Gas provided billing services.²⁷ For competitive service providers, which perform their own billing, Washington Gas submitted that it would provide each competitive service provider with reconciled billing data and will urge the supplier to refund any over-billed amounts to their customers.²⁸

In the Joint Stipulation, which is attached to this report as Appendix No. 1, the parties agreed that Washington Gas would refund overcharges on bills rendered beginning March 1996, or the date the customer commenced service, whichever is later, and ending on the date the billing for the customer is corrected.²⁹ Washington Gas will make refunds to current customers and to former customers who can demonstrate that they were customers in a premises entitled to a refund.³⁰ The Company will pay interest on over-billed amounts from the due date of each monthly bill to the date refunds are made.³¹ Interest on refund amounts will be at the applicable average prime rate, compounded annually.³² A customer will receive the refund as a lump-sum credit on his or her bills.³³ If, after applying the credit to current and past due charges, the remaining credit balance exceeds \$5.00, Washington Gas will give the customer the option of receiving the remaining credit balance as a lump sum payment.³⁴

The Joint Stipulation provides that Washington Gas may collect from customers who were under-billed during the one-year period preceding the date the billing is corrected, or for a period beginning when the customer commenced service, whichever period is lesser.³⁵ The Company will charge no interest on under-billed amounts.³⁶ Washington Gas will divide the total under-billed amount by the number of bills on which such charges were computed, and will

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at ¶ 16.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Company Exhibit 1, at ¶ 1.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Hayes, Tr. at 24-25.

³⁴ Company Exhibit 1, at ¶ 1.

³⁵ *Id.* at ¶ 2.

³⁶ *Id.*

apply that amount to the same number of subsequent monthly bills for gas service.³⁷ During the hearing, the Company asserted that it will focus on collecting from existing customers.³⁸ Specifically, counsel for Washington Gas explained:

I think the Company's focus will be on current customers of record. If it comes to the attention of the Company, if a customer should call in, leave his address, and -- to determine whether he's been overcharged or undercharged, the Company may use that information to collect undercharges from that customer. But there's not going to be any organized means of identifying former customers.³⁹

The Joint Stipulation states that the Company may use its annual leak survey program to identify customers that were under- or over-billed.⁴⁰ During the hearing, counsel for Washington Gas indicated that if the Company determined that for specific customers the annual leak survey will not accurately identify whether the customer was billed correctly, "the Company may use a contractor to go out and actually measure the pressure at that address."⁴¹

In the Joint Stipulation, Washington Gas agrees that, within sixty days from the issuance of a final order in this proceeding, it will file a proposed tariff with the Commission for resolution of general billing errors that may occur in the future.⁴² Further, Washington Gas agrees to file a report with the Commission's Division of Energy Regulation on a semi-annual basis beginning September 30, 2002, regarding the status of the resolution of this billing problem.⁴³ Among other things, these reports will include the number of customers identified as having been over- or under-billed, the total refunds credited, and the total under-charges billed and collected.⁴⁴

For customers that have purchased gas from competitive service providers and were under- or over-billed, the Joint Stipulation provides that Washington Gas shall make refunds, or collect under-billed amounts, related to the cost of gas sold by the competitive service provider.⁴⁵ Amounts refunded or collected by Washington Gas related to the cost of gas supplied by a competitive service provider shall be reflected in the Company's Actual Cost Adjustment calculation.⁴⁶ Washington Gas will make arrangements in accordance with these terms with all

³⁷ *Id.*

³⁸ Hayes, Tr. at 26-27.

³⁹ *Id.* at 27-28.

⁴⁰ Company Exhibit 1, at ¶ 4.

⁴¹ Hayes, Tr. at 45.

⁴² Company Exhibit 1, at ¶ 5.

⁴³ *Id.* at ¶ 6.

⁴⁴ *Id.*

⁴⁵ *Id.* at ¶ 7.

⁴⁶ *Id.*

competitive service providers currently conducting business that have sold gas supplies to residential and small commercial customers of the Company.⁴⁷

Finally, the Joint Stipulation is conditioned upon approval by the Commission of its terms in their entirety.⁴⁸ If the Commission does not accept and approve it in its entirety, “it is deemed withdrawn and shall not constitute any part of the record in this proceeding or be used for any other purpose whatsoever.”⁴⁹

DISCUSSION

As described above, nearly all of the parties to this case, including all of the parties present at the public hearing, supported the Joint Stipulation.

At the public hearing, counsel for Washington Gas presented the Joint Stipulation and addressed two issues. First, counsel for Washington Gas discussed the issue of partial payment priorities. Section 20 VAC 5-312-90 H provides:

The local distribution company shall apply a customer’s partial payment of a consolidated bill as designated by the customer, or, in the absence of a customer’s designation, to charges in the following order: (i) to regulated services arrearages owed the local distribution company; (ii) to competitive energy service arrearages owed the competitive service provider; (iii) to regulated service current charges of the local distribution company; (iv) to competitive energy service current charges of the competitive service provider; and (v) to other charges. Collections of state and local consumption taxes and local utility taxes shall be remitted as required by law.

Counsel for Washington Gas explained that under the Joint Stipulation, charges billed to a customer who was under-billed due to the billing error that is the subject of this case, will be treated as current charges of the local distribution company for purposes of 20 VAC 5-312-90 H.⁵⁰ Thus, such charges would fall into category (iii), and would have priority over current charges of competitive service providers.⁵¹ Counsel for Washington Gas observed that a competitive service provider may argue that the billing errors should be treated as “other charges” and assigned to category (v).⁵²

⁴⁷ *Id.*

⁴⁸ *Id.* at ¶ 10.

⁴⁹ *Id.*

⁵⁰ Hayes Tr. at 36-37.

⁵¹ *Id.*

⁵² *Id.* at 37.

Counsel for Washington Gas asserted that the billing error charges are current charges of the Company.⁵³ Counsel argued that to treat these payments as something other than current utility charges would require a waiver of the Commission's payment priority rules.⁵⁴ Furthermore, counsel for Washington Gas pointed out that the under-billed amounts contain both utility distribution charges as well as charges related to the cost of gas provided by the competitive service provider.⁵⁵ Because the Joint Stipulation reflects amounts related to the cost of gas in the Company's Actual Cost Adjustment ("ACA") calculation, counsel for Washington Gas asserted that it would be difficult to modify the Company's billing system to handle such amounts properly if they were treated as other charges.⁵⁶ Further, ACA treatment is justified because Washington Gas has, in effect, supplied the gas to the customer.⁵⁷ Finally, counsel for Washington Gas maintained that this is only a theoretical concern. The Company expects the number of customers under-billed as a result of the billing error, served by a competitive service provider, and making only a partial payment without designating how to apply the partial payment to be insignificant.⁵⁸

The issue of partial payment priority is not specifically addressed in the Joint Stipulation. Paragraph 7 of the Joint Stipulation, which covers customers served by competitive service providers, does not address partial payments. In its entirety, Paragraph 7 of the Joint Stipulation states:

In any case where a residential or small commercial customer is entitled to a refund under Paragraph 1 above, or where the Company may collect undercharges from a residential or small commercial customer under Paragraph 2 above, and where such customer has purchased gas supplies from a competitive service provider ("CSP") during any month in which a billing adjustment was made, the Company shall make refunds, or collect undercharges, related to the cost of gas supplies sold by a CSP directly to, or from, such customer without any further involvement of, or obligation to, the CSP. Such refunds, or undercharges, shall be based on actual Delivery Charges and CSP rates in effect at the time such gas sales were made. The portion of refunds made, or undercharges collected, by the Company relating to the cost of gas supplied by a CSP shall be reflected in the Company's Actual Cost Adjustment calculation. Washington Gas shall make arrangements in accordance with the foregoing terms with all CSPs currently conducting business and which may have sold gas supplies to residential and/or small commercial customers

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 37-38.

⁵⁶ *Id.* at 38.

⁵⁷ *Id.* at 39-40.

⁵⁸ *Id.* at 38-39.

currently of record of Washington Gas and/or the Shenandoah Gas Division affected by the 2-psi billing adjustment problem.⁵⁹

Because Paragraph 7 does not explicitly address partial payment priorities, and because it provides for arrangements to be made between Washington Gas and competitive service providers, I find the Commission is not required to resolve any issues that may arise concerning partial payment priorities at this time. The Commission should encourage the Company and competitive service providers to work through any issues that may arise concerning partial payments. However, whether a partial payment should be treated as current charges of the local distribution company or as other charges can be deferred until the Commission is presented with specific facts and circumstances regarding costs and revenues related to the gas consumed by the customer. Moreover, because customers may designate application of partial payments, the issue of partial payment priority may never arise.

The second issue addressed by counsel for Washington Gas during the hearing concerned whether the billing error that lies at the heart of this case provides any indication that there is a related safety or delivery pressure problem. Counsel for Washington Gas affirmed:

The Company wants to state emphatically that this is not a safety or delivery pressure problem. This is strictly a bill coding problem. The pressure is what it is at the premises. The problem arose because that pressure was not correctly reflected in the billing system. But there is no safety problem or delivery pressure problem associated with this.⁶⁰

I can not find anything in the record that remotely suggests that the billing problem in this case is related in any way to a safety or delivery pressure problem. Therefore, I agree with the Company that its billing error fails to indicate a safety or delivery problem.

Regarding the Joint Stipulation, it is well settled that a utility in Virginia is prohibited from permitting any customer to receive preferential treatment as to cost of service or to deviate from their filed tariffs. For example, in *C & P Telephone Co. of Va. v. Bles*, the Court interpreted Virginia Code § 56-234 to constitute “a public policy determination that all customers in the same approved rate classification must be charged no more and no less than the rates shown on the schedule applicable to that category of users.”⁶¹ In that case, the Court ruled that equitable estoppel could not be used as a defense against a utility seeking to collect charges negligently omitted from earlier billings.

The statutory requirement that public utilities adhere rigidly to rate schedules approved by the State Corporation Commission precludes a customer from interposing the defense of equitable estoppel in an action by a utility to collect the balance of charges

⁵⁹ Company Exhibit 1, at ¶ 7.

⁶⁰ Hayes, Tr. at 46.

⁶¹ 218 Va. 1010, 13 (1978).

negligently omitted in earlier billings. In such actions reliance upon this common law defense has been foreclosed by the special statutory provisions applicable to public service companies which operate subject to regulation and supervision by the State Corporation Commission.⁶²

Consequently, Washington Gas should be required to correct its billing error and provide for the refund of over-billed amounts and the collection of under-billed amounts. Based on the Company's Application and based upon a review of the record, I find that the Joint Stipulation offers a reasonable and just resolution to all of the issues in this case. Therefore, I find that the Joint Stipulation should be adopted.

Accordingly, ***I RECOMMEND*** the Commission enter an order that:

1. ***ADOPTS*** the findings in this Report;
2. ***APPROVES*** the Joint Stipulation; and
3. ***DISMISSES*** this case from the Commission's docket of active cases and passes the papers herein to the file for ended causes.

COMMENTS

The parties are advised that pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure, any comments to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within twenty-one days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

Alexander F. Skirpan, Jr.
Hearing Examiner

⁶² *Id.* at 1015.